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CYPRUS

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I. LAND AND PEOPLE

A. Geography

1. Cyprus is the third largest island in the Mediterranean with an area of 9,251 sq km and a population of just over 714,000 inhabitants. It is situated at the north-eastern end of the Mediterranean basin at a distance of approximately 360 km east of Greece, 300 km north of Egypt, 105 km west of Syria and 75 km south of Turkey. It is a mainly mountainous country with two mountain ranges. Pentadaktylos in the north and Troodos in the south-west culminating in the peak of Mount Olympus (1,953 m). The largest plain is situated between them. The climate is temperate (Mediterranean), with its typical seasonal rhythm strongly marked in respect of temperature, rainfall and weather generally. The average annual rainfall is 500 mm, the fall from December to February being nearly two thirds of the yearly total. From time to time the country suffers from drought.

B. Historical background

2. Cyprus has played an important part in the history of the eastern Mediterranean. Its history spans nine millennia. In the second millennium B.C. the Achean Greeks established city-kingsdoms in the island on the Mycenaean model and introduced the Greek language and culture which are preserved to this day despite the vicissitudes of history.

3. Cyprus was well-known to the ancients for its copper mines and forests. Its geostrategic position and wealth accounted for a succession of conquerors such as the Assyrians, the Egyptians and the Persians. During the fifth century B.C. there was considerable interaction between Athens and Cypriot city-states, particularly Salamis.

4. On the partition of the empire of Alexander the Great, who liberated the island from the Persians, Cyprus became a significant part of the empire of the Ptolemies of Egypt; the Hellenistic period ended in 58 B.C. when the Romans came and remained until the fourth century A.D., making Cyprus part of the Roman Empire. The introduction of Christianity to Cyprus by apostles Paul and Barnabas in 45 A.D. was the most important event during the period of the Roman rule.

5. In 330 A.D. Cyprus became part of the eastern section of the Roman Empire and later of the Byzantine Empire and remained so until the twelfth century A.D. During the period of the Crusades, it was conquered by Richard the Lionheart of England (1191) who sold the island to the Knights Templar. They were followed by the Frankish Lusignans who established a kingdom on the western feudal model (1192-1489). It then came under the rule of the Republic of Venice until 1571, when it was conquered by the Ottoman Turks. The Ottoman occupation lasted until 1878 when Cyprus was ceded to the United Kingdom. In 1923, under the Treaty of Lausanne, Turkey relinquished every right to Cyprus and recognized its annexation to the United Kingdom, already proclaimed by the British Government in 1914.

6. After a long but unsuccessful peaceful political and diplomatic effort, which included a referendum for self-determination in 1950, the Greek Cypriots

took up arms in 1955 against the colonial power to attain freedom. During the anticolonial struggle, Turkey encouraged the Turkish Cypriot leaders to identify themselves with the colonial government in an effort to thwart the struggle for self-determination of the people of Cyprus. The "divide and rule" policy of the colonial government made serious incidents between the two communities inevitable.

7. The British rule lasted until August 1960 when, on the basis of the Zurich-London Agreements, the island became independent and was proclaimed a republic.

C. Population

8. The population of Cyprus at the end of 1991 was 714,600 (males: 356,700, females: 357,900). Population distribution by ethnic group is 80.1 per cent Greek (including the small religious groups of Maronites, Armenians, Latins and others), 18.6 per cent Turkish and 1.3 per cent others, mainly British. (Settlers transferred from Turkey in order to alter the demographic structure of Cyprus, in contravention of international law, as well as the Turkish occupation forces, are, of course, not included.) As a result of the Turkish invasion the Greek Cypriots were forcibly expelled by the invading army from the area it occupied and are now living in the Government-controlled area; almost all the Turkish Cypriots who lived in this area were forced by their leadership to move to the area occupied by Turkish troops, whereas prior to the invasion the two communities lived together in roughly the same proportion of four Greeks to one Turk in all the six administrative districts. Twenty-two thousand Greek Cypriots, who remained enclaved in the Karpass peninsula occupied by the Turkish army, were also gradually expelled. Only 500 Greek Cypriots now remain enclaved in the Karpass peninsula.

9. This was the first case of ethnic cleansing in post-Second World War Europe.

10. The following statistics pertain to the area under the effective control of the Government of the Republic:

Population in the Government-controlled area (end 1991): 581,300
(males: 290,200; females: 291,100);

Percentage of population under 15 years (1991): 26.1 per cent
(males: 27.1 per cent; females: 25.1 per cent);

Percentage of population 65 years and over (1991): 10.1 per cent
(males: 9.0 per cent; females: 11.1 per cent);

Percentage of population in: urban areas: 66.5 per cent;
rural areas: 33.5 per cent;

Number of inhabitants per km² (1991): 76.8;

Working population as a percentage of the total population: 48.3.

11. The official languages of the country are Greek and Turkish. Nearly all Greek Cypriots are Orthodox Christians, Turkish Cypriots, Muslims, and members of Armenian, Maronite and Latin minorities adhere to their own Christian denominations. Under article 2, paragraph 2, of the Constitution they opted for the Greek Community of Cyprus.

D. Economy

12. The economy of Cyprus is based on the free enterprise system. The private sector is the backbone of economic activity with the Government's role limited to safeguarding the system, indicative planning and the provision of public utilities.

13. Although the blow inflicted on the economy by the Turkish invasion of 1974 was devastating (the occupied part at that time accounted for almost 70 per cent of the Gross Domestic Product), recovery was remarkable. Declines in GDP during 1974 and 1975 were quickly reversed and by 1976, it surpassed its pre-1974 level. Business confidence returned followed by a sharp upturn in investment. By 1979 economic activity had reached record levels. Unemployment, which approached 25 per cent of the economically active population in 1974-1975, had been virtually eliminated.

14. In more recent years (1985-1989) the economy has been growing at an average rate of 6 per cent. GDP approaches the £C 2 billion mark and the rate of inflation, which reached a record 13.5 per cent in 1980, has declined steadily thereafter to a level below 5 per cent. Full employment conditions prevail (the unemployment rate 2-3 per cent). The per capita income is today one of the highest in the region at US\$ 9,600 (1990), an impressive achievement considering the economic situation of the country 15 years earlier.

15. In the post-1974 period the economy underwent major structural changes. The manufacturing and services sectors have become increasingly important, as indicated by their contribution to GDP and their share in employment, while the importance of agriculture is steadily declining.

16. International trade is of considerable importance to the economy of Cyprus. On the production side, the lack of raw materials, energy resources and heavy industry for the production of capital goods necessitate the import of such inputs. On the demand side, because of the small size of the domestic market, exports are vital in supplementing aggregate demand for Cypriot agricultural, mineral and manufactured products. The main trading partners of Cyprus are the European Community and neighbouring countries of the Middle East.

17. The main characteristic of the balance of payments position is a large deficit in the trade balance which, in the last few years, was more than offset by invisible earnings from tourism, international transportation, offshore activities and other services.

E. Socio-economic indicators

18. The following indicators* are provided:

Life expectancy (1987-1991): 76.4 (males: 74.1; females: 78.6);

Infant mortality (1991): 10.4 per 1,000 live births
(males: 11.2; females: 9.6);

Total fertility rate (1991): 2.45

Literacy rate for ages 15 and over: 94.0 per cent
(males: 98.2 per cent; females: 89.9 per cent);

Estimated per capita income (1992): £C 5,304 (US\$ 11,784);

Gross National Product (1991): £C 2,708 million;

Rate of inflation 1991: 5.0 per cent 1992: 6.5 per cent;

External debt (1991): £C 491.4 million;

Unemployment rate (1991): 3.0 per cent
(males: 2.2 per cent; females: 4.3 per cent);

Persons/doctor (1990): 476;

Persons/hospital bed (1990): 168;

Telephone lines/100 population (1991): 46;

Passenger cars/1,000 population (1991): 314.

II. GENERAL POLITICAL STRUCTURE

A. Recent political history and developments

19. The Republic of Cyprus was set up on 16 August 1960 with the coming into force of three main treaties and its Constitution which have their origin in the Zurich Agreement of 11 February 1959 between Greece and Turkey and the London Agreement of 19 February 1959 between Greece, Turkey and the United Kingdom. The Constitution of the Republic together with the three treaties provided the legal framework for the existence and functioning of the new State.

* Because of the presence of the Turkish Army, the Government of the Republic of Cyprus has no access to the occupied area and therefore figures in respect of the occupied part of Cyprus are not available.

20. The three treaties are:

(a) The Treaty concerning the Establishment of the Republic of Cyprus signed by Cyprus, Greece, Turkey and the United Kingdom. It provided for the establishment of the Republic of Cyprus and, inter alia, for the creation and operation of two British military bases in Cyprus, the cooperation of the parties for the common defence of Cyprus and the recognition and respect of human rights of everyone within the jurisdiction of the Republic comparable to those set out in the European Convention on Human Rights (United Nations Treaty Series, vol. 382 (1960), No. 5476);

(b) The Treaty of Guarantee signed by Cyprus, the United Kingdom, Greece and Turkey by which the independence, territorial integrity and security of the Republic of Cyprus, as well as the state of affairs established by the Basic Articles of its Constitution, are recognized and guaranteed (United Nations Treaty Series, vol. 382 (1960) No. 5475);

(c) The treaty of Alliance signed by Cyprus, Greece and Turkey, aiming at protecting the Republic of Cyprus against any attack or aggression, direct or indirect, directed against its independence or its territorial integrity (United Nations Treaty Series, vol. 397 (1961) No. 5712).

21. Whilst establishing an independent and sovereign Republic, the Constitution of Cyprus, "unique in its tortuous complexity and in the multiplicity of the safeguards that it provides for the principal minority, ... stands alone among the constitutions of the world" (S.A de Smith, The New Commonwealth and its Constitutions, London, 1964, p. 296). Therefore, it was no surprise that, within less than three years, abuse of safeguards by the Turkish Cypriot leadership led to total unworkability of the Constitution which necessitated the proposals for constitutional amendments submitted by the President of the Republic and which were immediately rejected by the Turkish Government.

22. Turkey, in furtherance of its designs based on territorial aggrandizement, instigated the Turkish Cypriot leadership's resort to insurrection against the State, forced the Turkish Cypriot members of the executive, legislature, judiciary and civil service to withdraw from their posts and created military enclaves in Nicosia and other parts of the island. As a result of the foregoing and the intercommunal violence that ensued the Security Council of the United Nations was seized with the situation and by resolution 186 (1964) of 4 March 1964 a peace-keeping force was sent to Cyprus and a mediator appointed. In his report (S/6253-A/6017) the Mediator, Dr. Galo Plaza, criticized the 1960 legal framework and proposed necessary amendments which were again immediately rejected by Turkey, a fact which resulted in serious deterioration of the situation with constant threats by Turkey against the sovereignty and territorial integrity of Cyprus which necessitated a series of United Nations resolutions calling, inter alia, for respect of the sovereignty, independence and territorial integrity of Cyprus.

23. The Secretary-General of the United Nations in 1965 described the policy of the Turkish Cypriot leaders in this way:

"The Turkish Cypriot leaders have adhered to a rigid stand against any measures which might involve having members of the two communities live and work together, or which might place Turkish Cypriots in situations where they would have to acknowledge the authority of Government agents. Indeed, since the Turkish Cypriot leadership is committed to physical and geographical separation of the communities as a political goal, it is not likely to encourage activities by Turkish Cypriots which may be interpreted as demonstrating the merits of an alternative policy. The result has been a seemingly deliberate policy of self-segregation by the Turkish Cypriots" (S/6426).

Despite this policy, a certain degree of normality gradually returned to Cyprus and by 1974, with the active encouragement of the Government, a large proportion of Turkish Cypriots were living and working alongside their Greek Cypriot fellow citizens.

24. Using as a pretext the coup d'état of 15 July 1974, instigated by the Greek military junta against the Cypriot Government, Turkey invaded the island on 20 July. Forty thousand Turkish troops landed on the island, in violation of the Charter of the United Nations, the Treaties of Guarantee and Alliance and the relevant principles and norms of international law. As a result approximately 37 per cent of the island was occupied, 40 per cent of the Greek Cypriot population, representing 82 per cent of the population of that area, was displaced and thousands of people, including civilians, were killed, ill-treated or disappeared without trace (there are still 1,619 Greek Cypriots missing including women and children and other civilians, many of whom were known to have been captured by the Turkish Army).

25. The occupation forces resorted to the systematic destruction of the cultural and religious heritage of Cyprus and implanted about 80,000 settlers from mainland Turkey in an effort to alter the demographic structure of the island. This also led to the shrinking of the indigenous Turkish Cypriot population to less than 100,000 (from 120,000 in 1974) through the emigration of more than 35,000 Turkish Cypriots from the occupied area (report of the Parliamentary Assembly of the Council of Europe, "The demographic structure of Cypriot communities" (Doc. 6589)).

26. Another series of United Nations General Assembly and Security Council resolutions condemned the invasion of Cyprus, the continuing military occupation, the colonization and the secessionist acts that followed; demanded the return of the refugees to their homes in safety, as well as the tracing of the missing persons; urged the speedy withdrawal of all foreign troops; and called for respect for the human rights of the Cypriots (General Assembly resolutions 3212 (XXIX) 1 November 1974, 3395 (XXX) 20 November 1975, 31/12 of 12 November 1976, 32/15 of 9 November 1977, 33/15 of 9 November 1978, 34/30 of 20 November 1979, 37/253 of 13 May 1983; Security Council resolutions 353 (1974) of 20 July 1974, 354 (1974) of 23 July 1974, 355 (1974) of 1 August 1974, 357 (1974) of 14 August 1974, 358 (1974) of 15 August 1974, 359 (1974) of 15 August 1974, 360 (1974) of 16 August 1974, 361 (1974) of 30 August 1974, 365 (1974) of 13 December 1974, 367 (1975) of 12 March 1975, 414 (1977) of 15 September 1977, 440 (1978) of 27 November 1978, 541 (1983) of

18 November 1983, 550 (1984) of 11 May 1984, 649 (1990) of 12 March 1990, 716 (1991) of 11 October 1991, 750 (1992) of 10 April 1992, 774 (1992) of 26 August 1992, 789 (1992) of 24 November 1992).

27. Moreover, the European Commission of Human Rights found the Government of Turkey responsible for gross massive and continuing violations of human rights in Cyprus, including murders, rapes, expulsions and refusal to allow more than 180,000 Greek Cypriot refugees to return to their homes and properties in the occupied part of Cyprus (cf. Cyprus against Turkey, report of 10 July 1976 on Applications No. 6780/74 and 6950/75, and report of 4 October 1983 on Application No. 8007/77 of the European Commission of Human Rights).

28. On 15 November 1983, in the middle of yet another United Nations initiative, the regime in the part of Cyprus occupied by Turkish troops proclaimed the creation of a so-called "Turkish Republic of Northern Cyprus". Turkey immediately accorded recognition to the secessionist entity which, however, has not been recognized by any other State. Further secessionist acts followed. United Nations Security Council resolutions 541 (1983) and 550 (1984) condemned the unilateral declaration and all subsequent secessionist acts, declared them illegal and invalid and called for their immediate withdrawal. The resolutions also called on all States not to recognize the purported State and not to facilitate or in any way assist it.

29. In its search for a peaceful solution, the Cypriot Government, despite the continuing illegal occupation, agreed to intercommunal talks being held in line with the aforementioned resolutions. These talks are continuing even today. Success was not possible because of the Turkish intransigence and partitionist designs.

30. From the above it is evident that the Government of the Republic of Cyprus is prevented by armed force from exercising its authority over and assuring respect of human rights in the occupied area (see, inter alia, European Commission of Human Rights, Cyprus against Turkey, op. cit.: "The Commission concludes that Turkey's jurisdiction in the north of the Republic of Cyprus, existing by reason of the presence of her armed forces there which prevents exercise of jurisdiction by the applicant Government, cannot be excluded on the ground that jurisdiction in that area is allegedly exercised by the 'Turkish Federated State of Cyprus'").

B. The constitutional structure

31. The Constitution provides for a presidential system of government with a President who has to be Greek and a Vice-President who has to be a Turk, elected by the Greek and Turkish communities of Cyprus respectively for a fixed five-year term (art. 1). The President and the Vice-President of the Republic ensure the exercise of the executive power by the Council of Ministers or the individual Ministers. The Council of Ministers, which comprises seven Greek and three Turkish Cypriot Ministers nominated by the President and the Vice-President respectively but appointed by them jointly, exercises executive power in all matters other than those which under express provisions of the Constitution are within the competence of the President and Vice-President and the Communal Chambers (art. 54).

32. A unicameral House of Representatives is provided for by the Constitution as the legislative organ of the Republic composed of 50 representatives, 35 elected by the Greek Community and 15 by the Turkish Community for a five-year term with a Greek Cypriot President and a Turkish Cypriot Vice-President, elected separately. The House of Representatives exercises the legislative power in all matters except those expressly reserved to the Communal Chambers under the Constitution (art. 61).

33. Two Communal Chambers were also envisaged by the Constitution to exercise legislative and administrative power in certain restricted subjects, such as religious affairs, educational and cultural matters and over communal taxes and charges levied to provide for the needs of bodies and institutions under the control of the Chamber (arts. 86-90).

34. The Constitution provided for a Supreme Constitutional Court consisting of a neutral President and a Greek and a Turkish judge appointed by the President and the Vice-President of the Republic and a High Court consisting of two Greek judges, one Turkish judge and one neutral President, all similarly appointed. The Supreme Constitutional Court was vested with jurisdiction in all constitutional and administrative law matters. The High Court is the highest appellate court. It has revisional jurisdiction and the power to issue orders in the nature of habeas corpus and other prerogative writs. Ordinary civil and criminal jurisdiction in the first instance is vested in the assize and district courts. The Constitution prohibits the setting up of judicial committees or exceptional or special courts under any guise.

35. The independent officers of the Republic are the Attorney-General and his Deputy, the Auditor-General and his Deputy and the Governor and Deputy-Governor of the Central Bank who are also appointed by the President and Vice-President on a community basis. The public service of the Republic should be composed of 70 per cent Greek Cypriots and 30 per cent Turkish Cypriots with a Public Service Commission similarly composed, responsible for appointments, promotions, discipline, etc.

36. Both communities were given the right to maintain a special relationship with Greece and Turkey, including the right to receive subsidies for educational, cultural, athletic and charitable institutions, and of obtaining and employing schoolmasters, professors or clergymen provided by the Greek or Turkish Government (art. 108).

37. The entrenched communal character of the Constitution was confirmed by the voting system. All elections were to be conducted on the basis of separate communal electoral lists (arts. 63 and 94) and separate voting (arts. 1, 39, 62, 86, 173 and 178). Elections are now based on the proportional representation principle.

38. The withdrawal of the Turkish Cypriot officials and their refusal to exercise their functions rendered governance in accordance with certain constitutional provisions impossible. Matters came to a head when the neutral Presidents of the Supreme Constitutional and High Courts resigned in 1963 and 1964 respectively and, therefore, neither Court could function. It should be

noted that the Turkish Cypriot judges in both the superior and district courts remained in their posts until 1966 when they were forced by the Turkish Cypriot leadership to leave the bench, whereupon half of them fled abroad.

39. The situation described above necessitated the introduction of remedial legislative measures. Thus, a new Administration of Justice (Miscellaneous Provisions) Law of 1964 was enacted creating a new Supreme Court which took over the jurisdiction of both the Supreme Constitutional Court and the High Court. The first President of the Supreme Court was the Turkish Cypriot most senior judge of the High Court. The same law reconstituted the Supreme Council of the Judicature which is the organ that ensures the independence of the judiciary.

40. The constitutionality of the Administration of Justice (Miscellaneous Provisions) Law, 1964 was challenged before the Supreme Court which, in the case of the Attorney-General of the Republic v. Mustafa Imbrahim (1964) (Cyprus Law Reports p. 195), decided that the Law was justified under the doctrine of necessity in view of the abnormal situation prevailing in Cyprus. Thereafter, the administration of justice reverted to normal.

41. Other main areas where, on the basis of the same doctrine, legislative action remedied similar situations were the Communal Chamber, the Public Service Commission and the membership of the House of Representatives.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

42. The basis of the legal system of Cyprus is the common law and the principles of equity applicable at the time of independence as amended or supplemented thereafter by the Republic's statutes and case law. Also, independence saw the introduction and development of the continental administrative and constitutional law.

43. It was natural for Cyprus, a country with a long history and tradition of civilization and culture, to accord, immediately after emancipation from colonial rule, vital importance to international law and particularly to human rights norms. Given the superior force of international instruments, international human rights law enriched and reinforced the body of municipal law that protects human rights and liberties. Therefore, one of the first tasks of the new Republic was to examine treaties extended to it by the United Kingdom and notify, as appropriate, succession thereto, whilst examining existing regional and universal human rights instruments and ratifying or acceding to nearly all of them, a policy that continues to date.

44. Central in the conduct of international relations of Cyprus is the recognition of the predominance of international law, the purposes and principles of the Charter of the United Nations and particularly the peaceful settlement of disputes based on respect of human rights and fundamental freedoms. As a result, Cyprus is party to most of the international human rights and humanitarian law treaties, conventions of the International Labour Organisation and other instruments including:

International Covenant on Civil and Political Rights (1966);

International Covenant on Economic, Social and Cultural Rights (1966);

International Convention on the Elimination of All Forms of Racial Discrimination (1965);

Convention on the Elimination of All Forms of Discrimination against Women (1979);

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);

Convention on the Rights of the Child (1989);

Convention on the Prevention and Punishment of the Crime of Genocide (1948);

Convention relating to the Status of Refugees (1951) and its Protocol (1967);

European Convention on Human Rights (1950) and most of its Protocols;

European Social Charter (1961);

European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (1987);

45. The constitutional structure of Cyprus, whilst embodying all norms necessary for the promotion of human rights and securing the separation of powers, particularly the independence of the judiciary, is permeated by communalism leading to separatism, even to polarization. The 1960 Constitution, the supreme law of the Republic, is the main instrument that recognizes and protects human rights. Part II of the Constitution, entitled "Fundamental rights and liberties", incorporates and expands upon the Universal Declaration of Human Rights and the European Convention on Human Rights.

46. Although the legislative, executive and judicial authorities are all enjoined by article 35 of the Constitution to secure, within the limits of their respective competence, the efficient application of human rights, it is the totally independent judiciary that is the ultimate protector of human rights and liberties.

47. All laws, and especially criminal law and procedure, must and do protect fundamental rights. Any law or provisions thereof that violate human rights in any way will be declared unconstitutional by the Supreme Court; this has occurred in many instances. Any restrictions or limitations of the human rights guaranteed under the Constitution have to be provided by law and have to be absolutely necessary only in the interests of the security of the Republic, or the constitutional order, or public safety, or public order or public health, or for the protection of the rights guaranteed by the Constitution to any person. Provisions relating to such limitations or restrictions should be interpreted strictly. The Supreme Constitutional Court, in the case of *Fina Cyprus Ltd v. The Republic* (RSCC, vol. 4, p. 33),

decided that "legislation involving interference with the Fundamental Rights and Liberties safeguarded under the Constitution ... and their construction is governed by the settled principle that such provisions should be construed in case of doubt in favour of the said rights and liberties".

48. Wherever positive action was contemplated by the Constitution or other instruments in respect of certain, mainly social, economic or cultural, rights, such action should be taken within a reasonable time.

49. The remedies available to an individual who claims that his rights have been violated are the following:

- (a) Right of petition and hierarchical recourse;
- (b) Recourse to the Supreme Court for the annulment of any decision, act or omission of an organ or authority (both original and revisional jurisdiction);
- (c) Raising by a party to any judicial proceedings of the question of unconstitutionality of any law or decision, whereupon the court is obliged to reserve the question for the decision of the Supreme Court and stay the proceedings;
- (d) Civil action for compensation, restitution and declaratory judgement. In cases of possible irreparable damage an injunction may be granted;
- (e) Private criminal prosecution;
- (f) Right of appeal in both civil and criminal cases;
- (g) The prerogative writs of habeas corpus, certiorari, prohibition, mandamus and quo warranto;
- (h) Courts exercising criminal jurisdiction may award compensation to victims of crimes up to, in the case of assize courts, Cf 3,000;
- (i) The Republic is liable to pay compensation or grant equitable remedy in respect of acts or omissions declared to be void by the Supreme Court;
- (j) The Republic is also liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of its officers or authorities;
- (k) The Council of Ministers may set up a Commission of Enquiry to investigate and report on serious allegations of misconduct including violations of human rights;
- (l) The House of Representatives and its Committees in the exercise of their functions, including parliamentary control, consider, on many occasions, allegations or situations that involve abuse of human rights;

(m) The Attorney-General of the Republic has a special responsibility to ensure the observance of legality and the rule of law and may often, proprio motu or at the instance of a complainant, order enquiries or advise on remedies;

(n) The Commissioner for Administration (Ombudsman) has, inter alia, competence to investigate complaints by an individual that the Administration has violated his individual rights or acted contrary to law or in circumstances amounting to maladministration;

(o) An individual, having exhausted domestic remedies, may have recourse or submit a communication under the optional procedures of various international human rights instruments such as the European Convention on Human Rights, the Optional Protocol to the International Covenant on Civil and Political Rights and the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(p) Cyprus has also accepted the compulsory jurisdiction of the European Court of Human Rights and the optional clause of compulsory jurisdiction of article 36 (2) of the Statute of the International Court of Justice.

50. In case of war or public danger threatening the life of the Republic or any part thereof, certain of the fundamental rights guaranteed under and specified by the Constitution may be suspended during the period of the emergency by a proclamation of emergency issued by the Council of Ministers. Such proclamation must be laid forthwith before the House of Representatives which has the power to reject it. The rights that may be suspended are the following:

(a) The right to life and corporal integrity, only in so far as it relates to death inflicted by a permissible act of war;

(b) Prohibition of forced and compulsory labour;

(c) The right to liberty and security of person;

(d) Freedom of movement;

(e) Inviolability of the dwelling;

(f) Interference with correspondence;

(g) Freedom of speech and expression;

(h) The right of assembly and freedom of association;

(i) The right to property, only in so far as prompt payment of compensation for requisitioning is concerned;

(j) The right to practise any profession or to carry on any business;

(k) The right to strike.

51. It should be noted that Cyprus has never proclaimed a state of emergency since independence, not even when the country was invaded by Turkey and part of it was, and continues to be, occupied.

52. International conventions ratified or acceded to by the Republic are incorporated into the Republic's municipal law and have, as from their publication in the Official Gazette, superior force to any municipal law. Such conventions are directly applicable in the Republic and can be, and are in fact, invoked before and directly enforced by the courts and administrative authorities (cf. decision of the Supreme Court in civil appeal No. 6616, *Malachtou v. Aloneftis*, 20 January 1986). When an international convention contains non-self-executing provisions, the Legislature has a legal obligation to enact appropriate legislation in order to harmonize the municipal law with the convention and make the latter fully enforceable.

53. Further, the Law Commissioner, an independent officer, now a former senior judge, who is responsible for the updating of legislation, has also been charged with ensuring compliance of Cyprus' reporting obligations under international human rights instruments, as well as identifying areas of inconsistency of municipal law and administrative practice with current international law standards in the field of human rights and proposing necessary action.

54. Cyprus is a practising pluralist democracy with absolute respect for the rights and freedoms of the individual. It continuously strives to achieve more progress in the field of human rights by overcoming difficulties chief of which is the continued occupation of more than a third of its territory. Through instruction and education and other positive action by the State it combats the remnants of prejudice, especially in respect of the equality of the sexes.

55. There are several non-governmental organizations covering all sectors of life, including human rights associations. There are also a number of statutory bodies such as the one for the promotion and protection of women's rights, the tripartite Labour Advisory Board and the Prices and Incomes Board.

56. The role of the mass media in the promotion and protection of human rights is considerable. The press is entirely free and the several daily, weekly and other newspapers and periodicals are privately owned. The same applies to radio and television broadcasting where only one radio and one television station is State owned but is run by an independent corporation.

IV. INFORMATION AND PUBLICITY

57. All international conventions and treaties to which Cyprus becomes party are published in the Official Gazette. Appropriate publicity is given to them in the media, printed and electronic press and includes the acceptance of the right under optional procedures to petition or address communications to human rights organs.

58. Human rights are considered a particularly important issue and special action is always taken to promote awareness among the public, and the relevant authorities, of the rights contained in the various human rights instruments.

Awareness, as the necessary precondition to, inter alia, claiming one's rights and prevention of abuses, is pursued mainly through education by including the teaching of human rights in the curricula at all levels of education, teachers' and police training academies, parents' guidance and other similar institutions.

59. The Government, the media and the private sector publish books and pamphlets on the question of violation of human rights in various languages. Posters and brochures are distributed to schools, youth centres and organizations. Special press releases regarding human rights are issued as necessary covering both local and international developments including conferences, seminars, lectures, colloquies and other similar events. Articles on human rights frequently appear in the newspapers and in specialized publications including those of the Bar Association and the human rights organizations.



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Introduction

1. The Swiss Confederation is a direct democracy with a federal structure. Its territory is composed of the territories of the 26 federated cantons and demi-cantons. There is no exclusively federal district.
2. For historical reasons and in the light of the country's linguistic and religious diversity, the Swiss political system attaches great importance to consensus and gives the cantons considerable autonomy. Switzerland is a permanently neutral State and, in time of peace, conducts a foreign policy of neutrality that determines its position in matters which are not covered by the international law of neutrality, but over which it has direct influence.
3. The Swiss economy is characterized by respect for free enterprise and the importance of international trade. Although it has been affected by a persistent economic crisis in recent years, its standard of living is still one of the highest in the world.

I. LAND AND PEOPLE

4. Swiss territory covers an area of 41,284 km². In 1991, Switzerland had a population of 6,872,600, including 5,633,200 Swiss and 1,239,400 foreigners. Approximately 1,091,000 foreigners living in Switzerland are of European origin, 31,088 come from the American continent, 22,320 from Africa and 44,301 from Asia. There are also 250 stateless persons. Foreigners account for 17.4 per cent of the total permanent population (20 per cent of the male population and 15 per cent of the female population).
5. In 1991, 48.9 per cent of the population was male and 51.1 per cent female; 17.4 per cent of the population was under 15 years old and 14.6 per cent was over 65. The under-15s accounted for 16.5 per cent of the female population and 18.2 per cent of the male population. Women aged over 65 account for 17.2 per cent of the female population, while men in that age group account for only 11.9 per cent of the total male population.
6. In late 1991, 50.5 per cent of the resident population lived in towns and cities, whereas 40.5 per cent lived in rural areas. The permanent resident population is composed of all persons who, in principle, live in Swiss territory year round. Seasonal workers, border workers (from abroad), tourists and asylum-seekers are not included in the permanent resident population.
7. About 42 per cent of the population is unmarried and 47.6 per cent married, with widowed and divorced persons accounting for 5.9 and 4.5 per cent of the total, respectively. In 1991, there were 47,567 marriages and 13,627 divorces. The latter figure is constantly increasing and it is estimated that, if the trend continues, 34 per cent of marriages will end in divorce. According to the 1980 census, there are 125,900 women heads of household, i.e. 7.7 per cent of all households.
8. Switzerland has four national languages, German (spoken by 65 per cent of the population), French (18.4 per cent), Italian (9.8 per cent) and Rhaeto-Romansch (0.8 per cent). The first three are the official languages of

the country. About 6 per cent of the population has another mother tongue. Language distribution by sex is as follows: 64.2 per cent of men speak German, 18 per cent French, 10.5 per cent Italian and 0.8 per cent Rhaeto-Romansch. For women, the figures are 65.8 per cent, 18.8 per cent, 9.1 per cent and 0.8 per cent, respectively.

9. With regard to religious denominations, the resident population is 44.3 per cent Protestant, 47.6 per cent Roman Catholic, 0.3 per cent Old Catholic, 0.9 per cent Muslim, 0.6 per cent Orthodox and 0.3 per cent Jewish, while 3.8 per cent is composed of persons who have no religious denomination. There are also some other religions (Mormons, Scientologists, etc.) which are very much in the minority, for which there are no individual statistics and which, taken together, make up about 0.3 per cent of the population.

10. In 1991, the infant mortality rate (death during the first year) was 6.2 per 1,000 births. In that year, 12.7 children were born for every 1,000 inhabitants. The fertility table, which indicates the number of children a woman aged between 15 and 49 would have if she were subject to the fertility rate observed at a particular time, was 1.61 in 1991. In that year, one woman died as a result of pregnancy or childbirth; thus, for 86,200 children born alive during that period, maternal mortality was 1.2 per 100,000 births.

11. The life expectancy of women is 80.9 years and that of men 74.1.

12. For a gross national product of Sw F 346 billion in 1991, average per capita income was about Sw F 43,149 per year.

13. The rate of inflation has increased considerably in recent years. It was only 0.8 per year in 1986, but rose to 3.2 per cent in 1989 and to nearly 5.9 per cent in 1991. There has recently been a downward trend and, in February 1993, the rate of inflation was 3.4 per cent. According to the Swiss National Bank, the annual rate of inflation for 1993 should not be more than 2.5 per cent.

14. The average unemployment rate was 0.6 per cent in 1990. This figure, which includes only unemployed persons registered with a labour office, has increased sharply since then because of the economic recession the country has suffered. It stands at about 4.6 per cent for the first few months of 1993.

15. Since school attendance is compulsory for everyone, no survey is conducted on illiteracy; it may, nevertheless be stated that the number of illiterate persons is very low.

II. GENERAL POLITICAL STRUCTURE

A. Historical background

16. The Helvetic Confederation was born of the perpetual alliance of the "Waldstätten" in 1291 and, until the French Revolution, was no more than a very loose-knit association of rural and urban communities. Relations between the States of the old Confederation were not governed by a Constitution, but by a large number of treaties of alliance. Some parts of Switzerland's

present territory were then only lands conquered by large cantons (such as Vaud, which was subject to the canton of Bern until 1803) or were placed under the joint trusteeship of the first members of the Confederation ("common jurisdiction").

17. On 12 April 1798, after the occupation of the territory of the Confederation by the French troops of the Directoire, the old treaties of alliance were replaced by the Constitution of the Helvetic Republic, which was established in Paris along the lines of the French Republic. However, the very idea of a unitary State, of a Republic one and indivisible, was far too alien to the country's traditions and ways of thinking and, after a brief period of constant crises, the Act of Mediation of 19 February 1803, which was imposed by Bonaparte, marked a return to federalism. The powers of the central Government were limited to foreign policy and the maintenance of law and order and the cantons continued to be sovereign States in all other areas. The weakness of the federal Government of the time was demonstrated by the fact that its highest body, the Federal Diet, was not a permanent executive, but a periodic congress of envoys from each canton.

18. After Napoleon's fall, Switzerland requested the European powers to recognize its independence and its neutrality. The 1815 Vienna Congress accepted this request and, at the same time, Switzerland got back old allied or subject territories which were restored to the Confederation, bringing the number of cantons bound by a treaty of alliance known as the "Federal Pact" to 22. Once again, the Diet assumed the joint tasks which had been delegated to it by the cantons (maintenance of law and order; foreign policy; and diplomatic relations with foreign countries). It had once again been denied broader powers.

19. The French Revolution of July 1830 also unleashed a liberal movement in Switzerland. This period, known as the "Regeneration", marked a renewal of public life. Most of the cantonal constitutions underwent considerable changes with a view to the strengthening of the principles forming the basis for popular sovereignty and representative democracy. These new constitutions, especially the liberal constitutions of some large cantons, were to some extent contrary to the Federal Pact of 1815, with the result that a revision of the Federal Pact and the strengthening of the central Government became necessary. In 1832, the Diet prepared a first draft revision. However, serious divisions paralysed its work for some time and, in 1847, 13 cantons took the initiative of appointing a commission to prepare a new draft. Before this work was completed, a brief civil war (15-25 November 1847) took place between the conservative Catholic cantons, which had concluded a separate alliance ("Sonderbund") and the more liberal Protestant cantons. The liberals' victory enabled the Diet to take note on 12 September 1848 of the fact that the Constitution of the Swiss Confederation had been accepted by a majority of cantons. This new text marked the change from a confederation of sovereign States united by very loose ties to a genuine federal State whose central Government now had broader powers.

20. Twenty years after the entry into force of the new Constitution, however, a further amendment became necessary. The cantons, which had meanwhile increased popular rights in their territories, were demanding that the same

should be done at the federal level. Moreover, international developments, particularly the outbreak of the Franco-German war of 1870-1871, made a further strengthening of the central Government desirable. Efforts to this end were therefore made and, on 19 May 1874, the Federal Assembly brought the current Constitution into force. This Constitution has undergone many partial revisions, but is still in force at the present time.

B. Government structure: federalism

21. Switzerland's history and its multilingualism have made federalism genuinely necessary: experience has shown that the unity of the Helvetic State can be guaranteed only if the diversity of the parties which compose it is safeguarded.

1. Organization of powers within the federal State

22. The main feature of Swiss federalism is recognition of the sovereignty of each canton. Power sharing between the central Government and the cantons is thus based on the principle of attribution: only the powers expressly attributed to it by the Constitution are vested in the Confederation and the cantons are sovereign in so far as their sovereignty is not limited by the Constitution and, as such, they exercise all the rights which are not delegated to the federal Government (art. 3 of the Constitution).

23. Originally, as has been seen, the Confederation had only a few powers, primarily in the fields of foreign relations, defence, arbitration of inter-cantonal conflicts and freedom of trade and industry. With the changeover to a federal State, however, the tasks of the central Government, which became permanent, increased in number and made the division of federal and cantonal powers more complex. Nowadays, some fields are exclusively within the competence of the Confederation. These are, for example, foreign relations, customs, currency, post and telecommunications, the army and legislation relating to atomic energy, animal protection, railways and aviation. Other sectors are exclusively within the competence of the cantons, such as religious worship, the police and social welfare.

24. Because of the coexistence of federal and cantonal legal provisions, there are other areas in which the division of powers is less clear cut. In many cases, lawmaking is done by the Confederation and implementation by the cantons. This is true in the case of civil law, criminal law, social insurance and road traffic. In other areas, such as taxes, sickness insurance and public education, lawmaking power is shared.

25. As may be imagined, situations can be very complex. Public education is but one example. Primary education comes within the exclusive competence of the cantons and, as a result, there is a wide variety of types of instruction and this gives rise to a problem in view of the increasing mobility of people in general and of students in particular. It was only in 1985 that an amendment to the Constitution standardized the date of the start of the school year.

2. Cantons and communes

26. Communes are the smallest political entity of the federal State. Switzerland has 3,000, which vary considerably in size. Their powers are defined by cantonal legislation relating to the organization of communes. They enjoy autonomy, which also varies and the most salient feature of which is sovereignty in matters of taxation. Their organization is not uniform; in many communes, power is still exercised by a communal assembly in which all inhabitants who are entitled to vote may take part, whereas larger communes have a communal parliament. The executive authority is the communal council, sometimes called the municipality, a collegiate body elected by direct popular vote in most cases. There is no judicial body at the communal level.

27. In the hierarchy of the State, which goes from the commune (lower level) up to the Confederation (higher level), the cantons are in the middle and are thus the linchpin of the country's political structure. They are sovereign, except for the powers attributed to the central Government. At present, Switzerland has 26 cantons and demi-cantons. While the Unterwald valley had already been divided into two parts before 1291, a religious dispute led to the split of Appenzell in 1597 and Basel was divided in 1883 following a civil war. On 24 September 1978, moreover, the people and cantons democratically accepted the establishment of the canton of the Jura, whose territory had hitherto been subject to the sovereignty of the canton of Bern.

28. Each canton has its own constitution and legislation. Legislative power is exercised by a unicameral parliament usually elected according to the system of proportional representation. Executive and administrative power is vested in a State council elected by the people for a specific period of time and organized according to the same principles as the Federal Council: the president changes each year and collegiality is the rule. It should nevertheless be noted that, in some cantons, elections of the parliament, the Government, cantonal judges and even lower ranking judicial officials take place by show of hands, as does any vote on a cantonal issue, in the context of citizens' assemblies known as "Landsqemeinde".

29. The cantons are also sovereign with regard to the organization of the courts. Their system is usually headed by a supreme court (cantonal court), which is a criminal court of cassation and of appeal against civil judgements of district courts. The majority of the cantons also have an administrative tribunal. Elsewhere, however, administrative decisions which are appealable are referred to the Government or to appeal commissions that are independent of the administration (the new article 98 (a) of the Federal Court Organization Act nevertheless requires the cantons to establish administrative courts within five years as of January 1992).

30. The political rights of citizens are broader than at the federal level, since the Government is directly elected by the people and, in addition to the right of constitutional initiative, which is possible only in federal law, many cantons have the right of legislative initiative enabling a certain number of citizens to request a popular vote on the amendment of the law.

3. Organization of federal powers

(a) The executive power: the Federal Council

31. The Federal Council is a governmental college composed of seven members who have equal powers. Each member is elected independently by the Federal Parliament for four years; he may be re-elected indefinitely. In practice, re-election is the rule, thus ensuring the continuity and stability of Swiss policy, particularly as neither the Federal Council nor any of its members may be deposed by the Parliament. This principle is reflected in the saying "Federal Council submits, but does not resign".

32. Each year, the Federal Assembly chooses one of the seven federal councillors as President. As a mere primus inter pares, he does not have any special powers, but his main role is to chair Government meetings and to assume representation functions.

33. Each federal councillor is the head of a department (ministry), whose interests he represents in the Government college. As a collegiate body, the Federal Council takes its decisions only by consensus or by a simple majority, and each member assumes responsibility for joint decisions.

34. As a result of its composition, the Federal Council represents a subtle linguistic, religious, regional and political balance. The Constitution prohibits more than one representative of the same canton from being members of the Federal Council at the same time. In addition, the tradition is that the Latin (French and Italian) minority should always have at least two representatives in the Federal Council and that the large cantons (Zurich, Bern and Vaud) should in principle be represented in it. Since 1959, a political compromise known as the "magic formula" has ensured the country's four largest political parties, i.e. the Radicals, Christian Democrats and Socialists (two representatives each) and the Democratic Union of the Centre (one representative), a permanent place in the Federal Council.

35. The Federal Council exercises the traditional executive functions (art. 102 of the Constitution): political management and development of the country; maintenance of law and order. It monitors respect for and the implementation of the Constitution, the laws and the judgements of the Federal Tribunal and, as appropriate, takes the necessary measures for their enforcement. In the few cases that the Constitution removes from the jurisdiction of the Federal Tribunal, the Federal Council is the supreme appeal authority. Its role as head of State makes it the representative of Switzerland abroad and the guardian of the interests of the Confederation; it also ratifies the international treaties adopted by the Federal Chambers. It should be noted that, according to well-established practice, some treaties may be concluded without parliamentary approval; this is true of those which only give the Confederation rights without imposing any obligations on it, those which are concluded on the basis of an express authorization given in advance by the Federal Assembly, those which serve only to enforce other treaties that have already been adopted, those which are temporary and urgent and those which, in internal law, come within the regulatory jurisdiction of the Federal Council.

(b) Legislative power: the Federal Assembly

36. Switzerland's system of a bicameral parliament is the direct result of federalism. The Council of States and the National Council form the Federal Assembly. The Council of States is composed of two representatives of each canton (the demi-cantons each have one seat), regardless of its size and its population. The National Council is composed of 200 peoples' deputies whose terms of office are divided among the cantons in proportion to the number of inhabitants they have. Although the way the councillors are elected to the Council of States is decided by each canton (they have generally opted for a majority vote, the canton of the Jura being the only exception), the members of the National Council are uniformly elected by proportional vote.

37. A legislative term of office lasts four years. The Chambers hold four regular sessions each year. The two Chambers have the same rights and any draft legislation or decision has to be accepted by both of them in order to enter into force. If the consideration of such a draft gives rise to differences of opinion between the Chambers, they keep referring it back to each another until a joint text can be adopted ("shuttle" procedure). The Chambers also have jurisdiction to authorize the Federal Council to ratify international treaties.

38. In joint session, the Federal Assembly elects the Federal Councillors, the President and the Chancellor of the Confederation, federal judges and, in time of war, a General Commander-in-Chief of the Army. It also closely monitors the federal administration, approves the Confederation's budget and accounts and allocates the necessary funds for new purposes.

39. The legislative texts adopted as a result of parliamentary debates are not final because the Constitution has recognized the right of popular referendum since 1874. Thus, if, within three months of the adoption of a law by the Federal Chambers, 50,000 valid signatures are collected from voters who would like the new provisions to be approved by the people, these provisions have to be voted on by the people and cannot enter into force unless a majority of citizens who have taken part in the voting so decide. The same happens at the request of eight cantons or in accordance with a decision of the Federal Chambers (art. 89, paras. 2 and 4, of the Constitution). Consequently, a law enters into force only after the three month referendum period at the earliest. In addition to general federal laws and decisions, the referendum applies to international treaties which are not subject to denunciation and are concluded for an unspecified period of time, as well as those which provide for membership of an international organization or lead to the multilateral unification of the law (art. 89, para. 3, of the Constitution). A constitutional amendment and membership of collective security organizations or supranational communities are subject in all cases to the dual consent of the people and the cantons (compulsory referendum, art. 89, para. 5, of the Constitution).

40. Since 1891, the Constitution has also recognized the right of popular initiative to propose the full or partial amendment of the Constitution (art. 121 of the Constitution). For this purpose 100,000 citizens' signatures must be collected within a period of 18 months. The Parliament cannot object to the submission of a popular initiative to the vote, except to declare it

inadmissible as a result of a procedural defect or null and void as a result of a violation of international law (this has never happened). Since an initiative can relate only to constitutional amendments, it must have the dual consent of the people and the cantons in order to be adopted.

(c) The judiciary: the Federal Tribunal

41. The Federal Tribunal is the highest judicial authority in the country. It is composed of 30 judges and 15 associate judges and sits in Lausanne. The Federal Insurance Court sits in Lucerne. Within the Federal Tribunal, there are two public law courts and two civil law courts, a debt recovery and bankruptcy chamber, a court of cassation and a special court of cassation, an indictment division, a criminal division and a federal penal court.

42. The Federal Tribunal guarantees respect for federal law in criminal, civil and administrative matters. However, it does not have jurisdiction to monitor respect for cantonal law, except in the event of a violation of a constitutional principle guaranteeing a fundamental human right, for example. In ruling in last instance on the decisions of the cantonal courts referred to it, the Federal Tribunal helps to ensure that cantonal laws are in keeping with federal law and that federal law is uniformly applied.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Competent human rights authorities and remedies available to a person who claims that his rights have been violated

43. The federal structure implies the complex overlapping of the powers of the confederation and the cantons in this area. If criminal and civil law (including commercial law) are taken together, their enforcement is primarily the responsibility of the cantons, which are sovereign to decide on judicial organization and, to a large extent, procedure. Administrative law may be either cantonal or federal. In general, violations of human rights are actionable in Switzerland in the ordinary civil, criminal or administrative courts. Administrative courts do not yet exist in all cantons, which are henceforth required to establish them by the new article 98 (a) of the Federal Judicial Organization Act (referred to below as OJF, annexed hereto 1/). When necessary, they are replaced by an executive authority or an independent appeals commission.

1. Criminal matters

44. Although substantive criminal law was unified by the Swiss Penal Code of 21 December 1937, its enforcement and procedure are primarily the responsibility of the cantons; Switzerland thus does not have one single system of criminal justice, but, rather, 26 different systems. In view of this diversity, only the main features that are the same for all cantons will be described below.

1/ The annexes referred to in this document may be consulted in the files of the Centre for Human Rights, in the original language, as submitted by the Government of Switzerland.

45. The system of criminal justice comes into play when an offence is discovered by the competent authority (usually the police) or reported to it. The authority then has to institute proceedings and start an investigation. If the probable perpetrator is identified, the case is referred to the examining magistrate; if not, the proceedings are suspended at this stage. The examining magistrate then has to identify the ingredients of the offence and decide whether the accused should be placed in pre-trial detention, which is, however, still the exception. If there is sufficient evidence, the authority brings charges and, if not, the investigation ends with a dismissal. From then on, the courts of first instance and, on appeal, the cantonal courts of cassation have jurisdiction to determine the guilt of the accused and, as appropriate, the penalty to be imposed. Except where a case is brought before the European Commission of Human Rights for a violation of the European Convention on Human Rights, the final decision is made by the Court of Cassation of the Federal Tribunal.

46. Some serious offences (such as cases of high treason or offences involving the use of explosives) are exclusively within federal jurisdiction (Federal Penal Court or Assize Court, arts. 340 to 342 of the Penal Code, annexed hereto 1/). These courts apply the Federal Penal Procedure Act of 15 June 1934. Appeals are heard by the Special Court of Cassation of the Federal Tribunal.

47. Serving members of the military and officials and employees of the Confederation and the cantons whose acts relate to national defence, as well as civilians guilty of offences against international law during an armed conflict, are subject to military law and the military courts, provided that such acts are punishable under the Military Penal Code (these are not a special law or special courts, since the procedure followed is very similar to that of the civil courts). These persons may, however, be tried by civil courts for offences not provided for by the Military Penal Code of 13 June 1927.

48. The cantons designate the authorities which are competent to deal with children and adolescents, as well as the procedure to be followed (arts. 369 to 371 of the Penal Code). The applicable substantive law is contained in Title Four of the Penal Code and appeals may be made to the Court of Cassation of the Federal Tribunal.

49. Since the adoption on 22 March 1974 of the Federal Administrative Criminal Law Act, the Federal Government has been competent to investigate and try offences against the penal provisions of the administrative laws of the Confederation. However, whenever the department concerned is of the opinion that there should be a penalty or term of imprisonment, the case file is transmitted to the cantonal prosecutor's office for the attention of the competent court. Any person affected by a criminal ruling by the Federal Government may ask to be tried by a court.

2. Civil matters

50. Jurisdiction in this regard belongs in first instance to the district courts, which apply the cantonal procedure. On appeal, disputes are settled by the cantonal courts and the Federal Tribunal (action for annulment).

According to article 41 (b) of the OJF, annexed hereto, 1/ the Federal Tribunal is the sole court, apart from the exceptions referred to in that article, to hear criminal indemnity actions brought by private individuals against the Confederation when the value in dispute is at least Sw F 8,000. Other disputes may also be referred to it in sole instance, but only with the express agreement of the parties (arts. 41 (c)) and 42 of the OJF). In such cases, it applies the Federal Civil Procedure Act of 4 December 1947.

3. Administrative matters

51. At the cantonal level, decisions taken by the Government may usually be appealed to an executive body, an independent appeals commission or an administrative tribunal. When such decisions, whether taken by a cantonal authority or by a federal authority, are based on federal law, they are in principle tried in last instance by the Federal Tribunal by means of the "administrative law remedy". The OJF nevertheless rules out this possibility for a number of disputes, which are then heard in last instance by the Federal Council. There are, however, federal appeals commissions whose decisions are final (such as the Swiss Commission on Applications for Asylum).

4. Violations of fundamental rights

52. In addition to the above-mentioned administrative law remedy, the main legal remedy available to a person claiming that his fundamental rights have been violated is an application for a "public law remedy" filed with the Federal Tribunal. This remedy, which is of a subsidiary nature, since it is admissible only if other remedies are possible, including the action for annulment filed with the Court of Criminal Cassation, civil actions for annulment and the administrative law remedy, is intended mainly as a means of appealing decisions of the cantonal authorities based on federal or cantonal law for violations of constitutional rights or directly applicable provisions contained in international human rights conventions. The relevant provisions of the OJF read as follows:

"Article 84:

(1) An action may be applied for in the Federal Tribunal for a remedy against a cantonal decision or judgement for a violation of:

(a) Constitutional rights of citizens;

(b) ...

(c) International treaties, except in the case of a violation of their civil law or criminal law provisions by a cantonal decision;

(d) ...

Article 85:

The Federal Tribunal also hears:

(a) Actions in respect of the right of citizens to vote and rights relating to cantonal elections and voting;

Article 86:

(1) ...

(2) Actions for violations of the constitutional rights of citizens are admissible only after cantonal remedies have been exhausted;

(4) Actions for violations of directly applicable provisions of multilateral conventions for the protection of human rights and fundamental freedoms are admissible only after cantonal remedies have been exhausted."

53. There is an important restriction on the power of the Federal Tribunal to consider public law remedies. Article 113, paragraph 1 (3), of the Constitution requires it to apply, in every case, the general federal laws and decisions adopted by the Federal Assembly, as well as the treaties it has ratified. This provision, which is democratically inspired, since it is designed to prevent a court from declaring unconstitutional a text which has been submitted to an optional popular referendum and accepted by the people, even tacitly, nevertheless hampers the monitoring of the constitutionality of federal laws and their conformity with basic constitutional rights. It may thus be said that there is no full federal constitutional monitoring. The rule embodied in article 113 of the Constitution does not, however, prevent the Federal Tribunal from finding that a federal law is incompatible with the Constitution, thus prompting the lawmakers to remedy the situation.

B. System of compensation and rehabilitation of victims

54. A person who considers that he has been a victim of a violation of his rights may take legal action on the basis of the remedies described above and the procedures and judicial organization of the canton concerned. Criminal indemnity actions and appeals against administrative decisions are usually intended to obtain compensation for loss or injury (restitution, annulment of the administrative decision, compensation, moral damages) or a determination that the rights in question have been violated (action for a de jure determination). In principle, criminal indemnity actions against Government authorities come under the ordinary regime; however the cantons are free to enact special laws on the responsibility of cantonal authorities. As seen above, the Federal Tribunal sits alone in hearing criminal indemnity actions against the Confederation when the value in dispute is at least Sw F 8,000. There are special federal laws relating to the responsibility of Government bodies, such as the Federal Law of 14 March 1858 on the Responsibility of the Confederation, the Federal Law of 28 March 1905 on the Civil Liability of the Railways, Steamships and Postal Service and the Federal Law of 18 March 1983 on Civil Liability in Matters Relating to Nuclear Energy.

55. In criminal cases, the existence of criminal indemnification proceedings enables the victim of an offence or a crime to take part in the proceedings to assert his civil rights. When the act was committed by a Government official, the official's personal responsibility and that of the State may be engaged.

For reasons of solvency, Swiss law allows the victim or his beneficiaries to take proceedings directly against the Government. In some cases, it even makes it an obligation for the victim to do so (art. 3 of the Federal Law on the Responsibility of the Confederation).

56. In military cases, when the offence is punishable by the Military Penal Code, articles 163 and 164 of the Federal Law on Military Penal Procedure enable the victim to request compensation from the military courts.

57. With regard to assistance for the victims of criminal offences, it should be noted that the Federal Law on Assistance to Victims of Offences entered into force on 1 January 1993. Its purpose is to provide effective assistance to the victims of direct violations of their bodily, sexual or mental integrity, as well as to their families, whether or not the offender has been discovered and whether or not his conduct was wrongful. This new law provides that assistance includes counselling by cantonal guidance centres; the protection of the victim and his rights in criminal proceedings (measures to prevent any unnecessary publicity that is harmful to the victim; right to take part in the proceedings and submit criminal indemnity claims; right of appeal if the sentence affects such claims or the way in which they may be judged); and, in some circumstances, compensation and moral damages.

C. Constitutional protection of the rights provided for in the various international human rights instruments

58. In Swiss law, there is no separate declaration or charter listing the fundamental rights guaranteed by international conventions. Most of these rights are embodied in the 1874 Constitution or derived therefrom by the decisions of the Federal Tribunal; in that case, reference is made to "unwritten constitutional rights".

59. The Constitution expressly provides for:

The principle of equality before the law and the abolition of privileges (art. 4, para. 1);

The principle of equality between men and women (art. 4, para. 2);

Protection of the right of ownership (art. 22 ter);

Freedom of trade and industry (art. 31);

The political rights of citizens (art. 43);

Freedom of establishment of citizens in any part of the national territory (art. 45);

Freedom of conscience and belief (art. 49);

Freedom of worship (art. 50);

The right to marry (art. 54);

Freedom of the press (art. 55);

Freedom of association (art. 56);

The right to due process of law and the prohibition of special courts (art. 58);

The prohibition of corporal punishment (art. 65, para. 2);

The abolition of the death penalty for political crimes (art. 65, para. 1, made applicable by amendment of the Penal Code and the Military Penal Code to any death sentence);

The prohibition of imprisonment for contractual debts (art. 59, para. 3).

Since the Constitution dates back to 1874, the freedoms it guarantees have been adapted by court decisions. Over time, a relatively full set of case law relating to procedural and legal guarantees has been developed on the basis of the principle of equality embodied in article 4.

60. The Federal Tribunal has also derived the following "unwritten" rights from the interpretation of the Constitution:

Freedom of expression;

Freedom of person;

Freedom of language;

Freedom of assembly.

61. Since each canton has its own constitution, lists of fundamental freedoms also exist at the cantonal level. The Federal Tribunal regards them as autonomous only in the very rare case where the protection they offer goes beyond that afforded by written or unwritten federal constitutional law.

62. It should also be noted that the substantive provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (which entered into force for Switzerland on 28 November 1974) supplement the above-mentioned constitutional rights by guaranteeing fuller protection of the individual (see, for example, Federal Tribunal decisions (ATF) 101 Ia 67 and 106 Ia 35).

63. Although the Constitution places specific limitations on certain constitutional rights in accordance with the public interest, legal provisions and respect for the principle of proportionality (for example, the protection of the right of ownership does not prevent lawful expropriations), it does not provide for the possibility of a general derogation from the rights it guarantees.

64. In this connection, however, mention must be made of article 89 bis of the Constitution, which, in the event of necessity, allows the urgent implementation of federal decisions derogating from the Constitution, provided

that the people and cantons ratify them within one year from their implementation. This provision, which was adopted in 1949 following the Second World War, is designed to strike a balance between the need to give the Federal Government the necessary powers in the event of a serious crisis or threat to the country and the guarantees required to prevent abuses in the exercise of such increased power and to limit the restriction of democratic rights. Depending on the procedure defined and in the event of a state of necessity, this provision means that through urgent federal decisions, the exercise of some democratic or fundamental rights may be restricted or suspended for a limited period of time.

65. Although there usually has to be a legal basis for any restriction on the exercise of an individual freedom, the principle of "general police power" enables the authorities to issue orders or take individual decisions without any legal basis whenever the exercise of that freedom constitutes a grave and imminent danger to, or actually disturbs, public order. This power is based on article 2, paragraphs 9 and 10, of the Constitution (authorizing the Federal Council to guarantee Switzerland's internal and external security and the maintenance of order and tranquillity) or the unwritten constitutional rule known as the "general police clause". In order to prevent abuses and any violation of the principle of the rule of law, the Federal Tribunal carefully monitors the way this power is used (ATF 100 Ia 579/580).

66. Since 1974, any derogation from fundamental freedoms must be in keeping with the requirements of article 15 of the European Convention on Human Rights.

D. Incorporation of international human rights instruments into internal law

67. Switzerland is a country with a monist tradition: an international treaty ratified by the Federal Council (sometimes on its own initiative, but usually with the authorization of the Parliament or after a vote by the people or by the people and cantons; see paras. 35 to 39 above) forms part of federal law from the time of its entry into force for Switzerland without any need for it to be incorporated in the internal legal system through the adoption of a special law. This principle is unchallenged; it may be deduced from article 113, paragraph 1 (3), of the Constitution, which requires the Federal Tribunal to apply, in all cases, the federal laws and the treaties ratified by the federal authorities. Such a treaty is obviously an obligation under international law for the Swiss authorities.

68. Despite a few decisions to the contrary, the Federal Tribunal has, in its recent decisions, established the primacy of international law over internal law (ATF 106 Ib 402 and ATF 109 Ib 173). This is also the official position of the Federal Government. (See the joint ruling of the Federal Justice Office and the Public International Law Department on the relationship between international law and internal law within the Swiss legal system, dated 26 April 1989, annexed hereto, 1/ which the Federal Council expressly endorsed in its message of 18 May 1992 on the adoption of the Treaty on the European Economic Area.)

E. Direct invocability of the provisions of human rights instruments in national courts

69. To say that properly ratified international treaties immediately form part of the Swiss legal system and constitute an international obligation for the authorities does not necessarily mean that the rules they contain are directly applicable by national courts and may validly be invoked before them. An international treaty may contain "programme" provisions or provisions which merely establish the general framework of the subject-matter of the treaty; still others set objectives and leave the States parties a great deal of freedom in deciding how they should be achieved. Such rules are not directly applicable, but require the adoption of provisions of internal law to give effect to them. In other words, they are not self-executing. According to the decisions of the Federal Tribunal, a rule contained in an international human rights convention ratified by Switzerland cannot be directly invoked by a citizen unless, in the context and in the light of the object and purpose of the convention, it is unconditional and specific enough (i) to have a direct effect; (ii) to be applied as such to a particular case; and (iii) to serve as the basis for a concrete decision (see ATF 112 Ib 184). In the final analysis, the courts decide in particular cases whether such a treaty provision is self-executing.

F. National institutions and agencies with responsibility for guaranteeing respect for human rights

70. At the federal and cantonal levels, there are various official bodies whose responsibilities relate to the protection of human rights in specific areas. Particular reference should be made to the Federal Advisory Commission for the Problem of Foreigners and the Federal Refugee Commission, as well as the Office of Equality between Men and Women in the Federal Department of the Interior, which has its counterpart in many cantons.

71. A plan to establish a federal commission on racism is under review in connection with Switzerland's accession in 1993 to the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965.

72. Posts of "ombudsman" to provide assistance to private individuals in their relations with the administration have been established by the cities of Zurich and Winterthur and the cantons of Zurich, Basel-Town and Basel-Country. The city of Bern will establish such a post shortly. At the federal level, a plan for an "ombudsman", whose tasks would be to provide citizens with information on remedies available in their disputes with the federal Government, shed light on the facts and try to bring about conciliation, without, however, having any decision-making power, will be submitted to the Parliament shortly. Its terms of reference might include questions relating to action to combat racism.

73. In general, respect for and the protection of human rights is the responsibility of all Government authorities, both cantonal and federal, and, in particular, of the police and the courts.

IV. INFORMATION AND PUBLICITY

74. When the Federal Council plans to ratify a convention, it sets in motion a procedure for consultation with the main interested circles (political parties, cantons, universities, non-governmental organizations, etc.). On this basis, it decides whether it should propose that the Parliament should adopt the treaty. In such a case, it publishes a message for the attention of the Federal Assembly on the scope and consequences of such a commitment. This message is published in the Feuille fédérale (Official Journal of the Confederation) and is thus accessible to interested members of the public. The parliamentary debates on the question are given some publicity in the newspapers and on radio and television; apart from these debates, the ratification of a convention is often the topic of discussions in meetings, workshops and seminars organized by the universities and in schools.

75. Upon ratification, every convention, including those relating to human rights, is published in the Official Compendium of the Confederation and in the Systematic Compendium of Federal Laws in the three official languages, German, French and Italian. Thus and, as in the case of all federal laws, these treaties are known to the competent human rights authorities and are easily available to all citizens. In view of their importance, some texts are publicized specially. This was the case of the Universal Declaration of Human Rights, which was published in the Feuille fédérale as an annex to the 1982 report on Swiss human rights policy and translated into the fourth national language, Rhaeto-Romansch, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was published in the Feuille fédérale (in the three official languages) in 1988 on the occasion of the fortieth anniversary of the Universal Declaration of Human Rights.

76. Account should also be taken of the role of non-governmental organizations, several of which receive financial assistance from the Confederation, in the dissemination of human rights conventions in Switzerland and abroad, through publications, seminars and activities designed to increase the awareness of national and international public opinion.

77. Reports to be submitted to human rights treaty monitoring bodies are prepared in cooperation with the federal and cantonal Government authorities concerned, with the coordination of the Human Rights Section, Public International Law Department, Federal Department of Foreign Affairs. Non-governmental organizations and other outside bodies may be consulted on some points. If reports have not been the subject of a genuine public debate before they are submitted, the opinion of interested circles (including parliamentary commissions) is often requested.

78. The Federal Council is also considering the possibility of publishing the results of the consideration of Swiss reports by the competent international bodies, thus making a contribution to public debate on the situation, changes and problems with regard to the protection of human rights in Switzerland.



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BURKINA FASO

[7 July 1993]

I. LAND AND PEOPLE

A. Land

1. Burkina Faso is a land-locked country of 274,000 km² in the heart of western Africa. It is bounded on the north and west by Mali, on the east by the Niger, on the south-east by Benin and on the south by Benin, Togo, Ghana and Côte d'Ivoire.
2. Its terrain is uniform and flat, comprising a central plateau over three-quarters of the territory and two lateral plateaux rising above it. Its highest point is the Tena-Kourou (747 metres) in the west of the country.
3. Burkina Faso has a relatively substantial hydrological network, which comprises several rivers:
 - (a) The Mouhoun, the Nazinon and the Nakambé flow from the north to the south of the country and join in Ghana, before flowing into the Gulf of Guinea;
 - (b) The Comoé has its source in the Banfora region and crosses Côte d'Ivoire before flowing into the Atlantic Ocean.
4. Burkina Faso's Sudano-Sahelian tropical climate has two alternating and unequal seasons: a long dry season and a short rainy season.
5. Burkina Faso is divided into 30 provinces, 300 departments and 7,200 villages.

B. People

6. The population according to the 1985 census stood at 7,964,705. It was estimated at 9,539,990 in 1992. Women make up 52 per cent of the population. The annual growth rate is 2.68 per cent.

7. It is characterized by:

Its youth (50 per cent of the population are under 15 years of age);

Its essentially rural nature (85 per cent live in rural areas);

Uneven distribution throughout the territory and substantial internal and external migration flows (internal towards the south and south-west, external primarily towards Côte d'Ivoire and Ghana);

The infant mortality rate is 134 per thousand; 1/

The maternal mortality rate is 6.5 per thousand;

The juvenile mortality rate is 98 per thousand;

The fertility rate is 223 births per thousand women of child-bearing age;

Life expectancy at birth is 48 to 50 years.

In 1985, there were 1,265,246 households (INSD), 90.82 per cent of which were headed by men and 9.18 per cent by women.

(a) Ethnic groups

8. There are about 60 ethnic groups and national languages throughout the country. Besides the Mossi ethnic group, the largest (48 per cent of the population), there are Peuhls in the Sahelian strip in the northern part of the country, Grunshis, Lobi-Dagara, Bisza, etc. in the south, Bobo-Mande, Senufo, etc. in the west and Gourmanché, etc. in the east.

(b) Languages

9. French is the official language. Among the 60 or so national languages, the most widely spoken are Moré, Dyula and Fulfuldé.

(c) Religion

10. The inhabitants of Burkina Faso practise three religions: animism, Islam and Christianity, but in fact many Muslims and Christians sometimes refer back to their animist rituals.

(d) Economic indicators

11. With a national per capita income of US\$ 300 in 1990, 2/ Burkina Faso is among the least developed countries. During the 1980s, the gross domestic product (in real terms) rose slightly faster than the population (1979-1985:

2 per cent; 1985-1990: 3.5 per cent), but at the cost of appreciable financial imbalances and a deterioration in land assets.

(e) Jobs and incomes 3/

12. The agricultural sector is the main provider of jobs and incomes. Because of low agricultural productivity, however, household income is low and savings minimal.

(i) Employment:

The employment situation shows that most people working in rural areas experience long periods of unemployment, approximately 30 to 40 per cent of each year, because of the very short rainy season and the long dry season.

(ii) Incomes:

Household incomes, which represent a significant share of GDP, are derived from the following sources:

Wages from the modern sector;

Net surpluses from farms and businesses in the informal sector;

Remittances from emigrants.

Generally speaking, household incomes are not high; each inhabitant has an average disposable income of the equivalent of 9,000 CFA francs per month;

(f) Public finance

13. Public finance as an instrument of State economic policy occupies an important place in the national economy. The soundness of public finance therefore has an influence on economic development. Budgetary expenditure, which represents 21.1 per cent of GDP, is made up essentially of current expenditure (53.7 per cent) and capital expenditure (46.3 per cent). Wages and salaries represent 32.9 per cent of total budgetary expenditure or 61.2 per cent of current expenditure.

14. Because of the difficult situation of public finance, the State is not able to commit its own resources to finance development projects. It therefore makes use of external loans from foreign development partners. Burkina Faso receives four types of loans: multilateral, bilateral, bank loans and supplier credits.

15. Burkina Faso's outstanding external debt stood at 196.5 billion 4/ CFA francs in 1990. It is basically composed of 63.5 per cent of multilateral loans, 35.8 per cent of bilateral loans, and 0.7 per cent of bank loans and supplier credits. At the end of 1990, total multilateral loans stood at 124.78 billion CFA francs as against 119.76 billion in 1985, for a growth rate of 4.2 per cent in six years.

16. External assistance in its numerous forms has been in the region of US\$ 300 million a year in recent years, approximately 60 per cent of which has been capital investment and 40 per cent technical cooperation.

II. GENERAL POLITICAL STRUCTURE

Historical outline

17. Towards the end of the nineteenth century, Portugal, Great Britain, Germany and France became interested in what is currently Burkina Faso (formerly Upper Volta).

In 1896/97, France began its conquest of the country.

In 1904, the conquered territories of the Volta were attached to the colony of Upper Senegal-Niger.

In 1919, the territory of Upper Volta was constituted.

In 1932, Upper Volta was abolished and partitioned between French Sudan (modern-day Mali), the Niger and Côte d'Ivoire.

In 1947, Upper Volta was reconstituted within its territorial limits.

On 11 December 1958, the Republic of Upper Volta was proclaimed.

On 5 August 1960, Upper Volta acceded to independence.

The First Republic lasted from 1960 to 1966. On 3 January 1966, following a crisis in social conditions, the people came out into the streets to call on the army to take over the conduct of State affairs.

That date, 3 January 1966, marked the beginning of a period of instability.

On 18 June 1970, a new Constitution was adopted, thus initiating the Second Republic.

On 8 February 1974, the army seized power.

On 27 November 1977, the Third Republic was ushered in with the adoption of a new Constitution.

On 25 November 1980, the army again seized power. The Military Committee for Recovery and National Progress (CMRPN) took control of the Government.

On 7 November 1982, young military officers seized power in a putsch and formed the People's Salvation Council.

On 4 August 1983, following another putsch, the National Revolutionary Council conducted an experiment in revolution, with Committees for the Defence of the Revolution.

On 4 August 1984, the name of the country was changed, together with its flag and national anthem.

On 15 November 1987, another putsch ushered in a process of rectification (the Popular Front).

On 2 June 1991, a new Constitution was adopted and the Fourth Republic came into being. The country developed republican institutions. The Constitution of 2 June 1991 lays down a republican structure for State authority in both form and content, with clear separation between the legislative, executive and judicial powers.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED IN BURKINA FASO

A. The Constitution

18. In Burkina Faso, the Constitution makes the judiciary responsible for guaranteeing fundamental human rights and citizens' rights. The judge is, inter alia, the guardian of individual and collective rights in that he is the citizens' last defence against arbitrary acts and injustice.

B. Remedies

19. Any person who claims that his rights have been violated can seize the competent court.

20. The judge of general jurisdiction acts as the court of first instance, competent in civil, commercial and criminal matters. At the same level, the Labour Tribunal has been given competence to hear individual disputes between employers and employees.

21. In administrative matters, a specialized division of the Supreme Court is the sole competent body, at both first and last instance.

22. The Court of Appeal hears civil, commercial, criminal and social cases referred to it by litigants who were not satisfied at first instance. It is also competent at the second degree of arbitration in collective disputes. In its special form, the Assize Court, it is competent to try criminal cases at first and last instance.

23. At the top of the pyramid is the Supreme Court, which monitors and harmonizes enforcement of the law in all areas. In addition to administrative disputes, which it settles at first and last instance, it is the sole court competent in electoral and constitutional matters.

24. In all matters when it is materially impossible to restore a right, redress is made through the award of damages.

C. Rights referred to in the international human rights instruments

25. The rights referred to in the international human rights instruments are also set out in the preamble to the Constitution as an integral part of the

Constitution. Provision is made for derogations, which can be governed only by organizational laws and may only be exceptional in nature. Examples are the judicial police laws and the laws on expropriations for reasons of public interest.

D. Human rights instruments and national legislation

26. The national legislation is largely based on the human rights instruments, even though explicit reference is not made to them.

E. Human rights instruments and the national judicial bodies and/or administrative authorities

27. The provisions of the human rights instruments may be invoked before the courts or administrative authorities. Although they are not reiterated in domestic legislation, they may nevertheless serve as a basis for the Court's decision through the adoption of the grounds underlying them.

F. National machinery

28. The following national bodies are responsible for overseeing the observance of human rights:

(a) The Burkina Faso Human and Peoples' Rights Movement (MBDHP), founded on 19 February 1989; its objectives are the protection, promotion and defence of human and peoples' rights;

(b) The Burkina Faso Association for the Promotion of the Rule of Law and the Defence of Freedoms (APED Libertés), established on 18 May 1991, works alongside the MBDHP in the same field;

(c) The Study and Research Group on Democracy and Economic and Social Development in Burkina Faso (GERDES-Burkina), founded on 14 May 1992, aims to:

Promote democratic ideals and principles in Burkina Faso through research, studies and analysis;

Defend individuals' rights by fostering their full development;

Cooperate with national and international organizations pursuing the same goal.

IV. INFORMATION AND PUBLICITY

29. In Burkina Faso, the family remains the essential structure for preparing the child to live in society. It is the family that instils the basic rules for living in children and prepares them for their future responsibilities. Nowadays schools provide children with a considerable amount of information on their environment and the world in which they live. With the emergence of the mass media (television, press, cinema, video, etc.), some children have increasing access to information. Regrettably, however, this form of information is not systematically aimed at teaching children their rights and duties.

30. Several associations for the defence of children's rights and the development of children have emerged and are currently working to fill these gaps. There is a growing convergence of goals between them and the various radio stations, which now willingly organize talks with children on their rights and duties.

Note

1/ Data from National Institute of Statistics and Demography (INSD), 1985.

2/ National Plan of Action (PAN) for the Survival, Protection and Development of the Child, November 1992.

3/ PAN, Enfance, November 1992.

4/ PAN, Enfance, November 1992 (source: Central Bank of West African States).



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MADAGASCAR

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I. LAND AND PEOPLE

A. The land

1. Geographical situation

1. Madagascar is an island lying off the east coast of Africa between 12° and 26° south latitude and 43° and 51° east longitude. Its southern tip is crossed by the tropic of Capricorn. Separated from the African continent by the 400 kilometre wide Mozambique Channel, Madagascar is surrounded by other islands, including the Comoros 400 kilometres to the north-west, the Seychelles 1,200 kilometres to the north-east, and Réunion and Mauritius, which lie 600 kilometres and 800 kilometres to the east respectively.

2. Relief and climate

With a surface area of 587,041 square kilometres, Madagascar is the fourth largest island in the world, after Greenland, New Guinea and Borneo. Huge and elongated (1,580 kilometres long and 580 kilometres wide), the island is characterized both by a rugged topography and a range of climates extending from the tropical to the temperate. There are five distinct ecological zones corresponding to well-defined climatic and hydrological conditions.

3. The high (about 900 metres) plateau, composed of impermeable crystalline rock covered with a mantle of laterite, has a well developed drainage system, with occasional volcanic zones. The average annual rainfall is between 1,200 and 1,600 millimetres (six to seven months of rain, six to five months of dry season, with a four-month water deficit). These plateaus form the central region of Madagascar, running like a backbone down the length of the island. The numerous hills shelter small fertile valleys suitable for irrigated rice growing. The temperate and subtropical climate favours the cultivation of fruits and vegetables.

4. In the west, the coastal region slopes gently down from the central mountains to the Mozambique Channel. This region is composed of a wide band of sedimentary deposits, which form broad low-lying (from 0 to 200 metre) coastal plains separated by hilly ground and crossed by numerous rivers which, despite their size, have an irregular flow. The annual rainfall reaches about 1,500 millimetres in the north but falls to 800-900 millimetres in the south. This rainfall pattern, combined with annual average temperatures that vary between 23° C and 30° C (sometimes with minima of 13° in July and August), makes these areas a dry tropical pastoral region suitable for growing cotton, groundnuts and leguminous crops.

5. The east coast, a narrow (between 25 and 100 kilometres wide) strip of mainly sandy sediments, slopes steeply down from the high central plateau to the Indian Ocean. A region characterized by a tropical climate and abundant rainfall (between 3,400 and 1,500 millimetres per year), from north to south there is practically no water deficit. This region is often hit by cyclones. Surface water is abundant thanks to a very dense drainage system of very narrow rivers. After having watered the coastal plain most of these rivers

discharge into the sea, but not before forming the lakes and swamps linked by the Canal des Pangalanes. This region is particularly suitable for growing coffee and tropical fruits.

6. The north-east region is a hydrogeological extension of the western sediments. Consisting mainly of a zone of limestone relief with a network of underground rivers and the volcanic massif of the Montagne d'Ambre, it receives a great deal of rain throughout the year (between 1,000 and 3,000 millimetres). The rivers, though irregular, generally flow all year round. However, fresh water lakes, without being abundant, encroach on the river network. Sugar cane, cocoa, coffee and spices are grown, especially in the climatic enclave of the Sambirano region.

7. In the south, the relatively flat landscape forms a continuation of that in the west. Here, the rivers descending from the crystalline central plateau flow permanently, even though the rate of flow may vary a great deal according to the season. This is an arid region with a low annual rainfall (400 to 600 mm), characterized by a long dry season (three months of rain and nine months of drought). The principal activity is extensive cattle farming.

B. Population

1. Ethno-sociological characteristics

8. Several hypotheses have been advanced concerning the origin of the Malagasy people. But whatever their origin, it is a fact that a mixture of populations, once settled, gave birth to the true people of Madagascar. Thus, the Malagasy people is simultaneously characterized by ethnographic variety and ethnographic unity. The various populations are the result of the blending of different elements. They include people of different colour. Moreover, the Malagasy people is composed of ethnic groups scattered throughout the island. Each group has its own traditions, but the factors contributing to national unity carry the most weight.

9. This unity is to be found, with certain variations, in the material civilization, in the traditional oral literature, in the arts and, generally speaking, in the popular culture. Although each economic region has its own identity, national unity also finds expression in the modes of agriculture and the complementarity of resources.

10. The Malagasy population is very dispersed and, leaving aside the urban centres and such vital sectors as the deltas and alluvial plains, the land is thinly settled; moreover, quite a few regions, though rich, are enclaved and served by roads that are deteriorating for lack of maintenance or material and financial resources.

11. During the period 1950 to 1975, the growth rate increased from 1.59 to 3.5 per cent between 1960 and 1970. The first national census in 1975 recorded a population of 7,640,000. In 1984, a socio-demographic survey indicated a total population of 9,607,000. In 1990, the population of Madagascar was estimated at 10,944,000 with an average density of 19 per km², very unevenly distributed as already explained.

12. The global fertility rate (6.1) is 171 live births per 1,000 women of child-bearing age. The crude mortality rate is 17.6 per thousand, and life expectancy at birth is 54.5 years. The natural increase in population lies within the range of 2.7 to 3.2 per cent per year, which indicates that the population should double within 22 to 26 years. The proportion of young people is especially high: 46 per cent of the population is less than 15 years old as compared with 3 per cent over 60.

13. It is immediately possible to make two important observations:

The dependency ratio is high (93 per cent);

The population is largely rural (76 to 80 per cent).

14. The most recent figures on the distribution of the population according to sex and age are those for 1992:

Age	M	F	Combined
1	207 416	200 845	408 261
5	170 941	167 500	338 441
10	150 953	149 640	300 592
15	140 005	138 767	278 773
20	119 320	119 371	238 691
30	80 036	87 805	167 840
40	51 218	56 506	106 724
50	29 981	31 113	64 124
60	13 400	24 411	47 329
70	5 794	13 613	27 013
84		5 283	11 077
Grand Total:	5 831 091	5 965 781	11 796 873

C. Economic data

15. In 1975, the Second Republic (Democratic Republic of Madagascar) opted for an ideology based on socialism, a centralized and highly State-controlled economy and a policy of nationalization of the most important sectors. Because of bad management and the repercussions of the international economic crisis this policy failed to give the anticipated results.

16. In 1985, Madagascar was still trying to stabilize its external and internal finances while halting the serious economic deterioration of the years 1981-1982. Starting in 1988, economic policy became oriented towards a process of State disengagement which gave encouraging results, although the Malagasy economy remained precarious:

(a) Worsening of the terms of trade because of the collapse of world prices;

(b) Fiscal deficit;

(c) External trade deficit;

(d) External debt burden amounting to 2.21 billion SDR in 1990, with 18.4 per cent of the State budget going towards servicing the external debt;

(e) High inflation, which reached 20 per cent in 1987-1988.

17. The following figures have been taken from various national reports and reports published by international institutions:

(a) Gross National Product

GNP per capita in 1989: 230 dollars

Mean annual growth (1969-1989): -1.9 per cent

Annual inflation rate (1980-1989): 17.8 per cent.

(b) Total external debt

Public debt and publicly guaranteed debt, in millions of dollars (1989): 3,345

Non-guaranteed private debt (1989): 0

Loans from the IMF, in millions of dollars (1989): 165

Short-term debt, in millions of dollars: 97

Total external debt in millions of dollars (1989): 3,607.

(c) Total external debt ratios

As a percentage of exports of goods and services: 779.8

As a percentage of GNP: 154

Total debt service as a percentage of exports of goods and services: 52.0

Interest payments as a percentage of exports of goods and services: 27.8.

(d) Demography and fertility

Crude birth rate per 1,000 population (1989): 46

Crude mortality rate per 1,000 population: 16

Women of child-bearing age as a percentage of the female population: 44

Synthetic fertility rate in 1989: 6.5;
in 2000: 5.8.

(e) Urbanization

Urban population:

- (i) As a percentage of the total population (1989): 24;
- (ii) Mean annual increase (per cent) 1980-1989: 6.3.

Population of the capital city:

- (i) As a percentage of the urban population (1990): 2.3;
- (ii) As a percentage of the total population (1990): 6.

18. The policy of structural adjustment which Madagascar has had to accept has had serious social repercussions, including an increase in unemployment, a process of pauperization and the disintegration of the family nucleus leading to a high percentage of female heads of household (280 per 1,000 in 1987 among the vulnerable classes); the proportion of female heads of household is particularly high in the rural areas.

19. However, when the situation in 1990 is compared with that in 1985, it is possible to discern a number of significant improvements: a competitive exchange rate, the abolition of import quotas, the loosening of administrative restrictions on exports, the establishment of free zones, the drafting of a liberal investment code, a tighter budget, loans on favourable terms and a reduced internal debt.

20. The results for the first months of 1991 gave reason to hope that the financial crisis, which had continued into 1990, could be overcome without too many adverse effects on the ongoing process of adjustment and growth. The establishment of new institutions, which should conclude the current period of transition, should provide a basis for economic recovery.

D. Socio-cultural data

21. In conjunction with the circumstances which prevailed during the years 1991 and 1992, the economic situation briefly described above has led to deterioration, weakness and even regression in the socio-cultural sphere:

- (a) Increasing pauperization, which is particularly affecting the more vulnerable elements of the population;
- (b) Increasingly difficult access to the health services for the rural populations, which are either isolated or emigrating to the cities: in 1990 infant mortality was estimated at 110 per thousand. The maternal mortality rate (connected with childbirth) was 4.6 per cent;
- (c) A fall in school attendance, for which there are several reasons: an apparently spectacular increase in the number of primary schools but, at the same time, deterioration of the equipment and the well-known inadequacy of the teaching staff, insecurity and poverty.

22. In 1990, in primary education the proportion of children attending school was 70 per cent with considerable regional variations. The corresponding figure for secondary education was 14 per cent, again with significant regional variations. The clumsy experiment with the Malagasization of education has worked against the implementation of a rational education policy leading towards development. It is well-known that Madagascar enjoys the privilege of possessing a national language, with various dialects. However, the fundamental problem of the language of instruction, linked with access to the various levels of education (secondary and higher), remains one of the priority concerns of the authorities responsible for the teaching and training of the young.

E. Religion

23. It is customary to stress the prevalence of the Christian religion in Madagascar. Certainly, the Christian religion is the faith of half the population, more or less equally divided between Protestants and Catholics. However, these figures should not be taken at their face value. More recent estimates are less optimistic as far as the Christians are concerned. In fact, the Protestant churches include both those that sprang from foreign religious missions and the independent churches or sects inspired by protestantism. In addition, about 47 per cent of the population practice the traditional religions; these are all rather similar to each other to the extent that they are all monotheistic. The spectacular rise of Islam must also be taken into account. There are something like 1 million Sunni Muslims, 70 per cent of them Malagasy.

II. GENERAL POLITICAL STRUCTURE

A. Political history of the State

24. Since the beginnings of its known history, four factors have determined Madagascar's political development: (a) the fact that it is an island in the busy Indian Ocean, (b) the appearance of kingdoms starting in the thirteenth and fourteenth centuries, (c) the successive predominance of certain kingdoms in the eighteenth and nineteenth centuries and, finally, (d) foreign intervention starting in the middle of the nineteenth century. These four factors are examined in more detail below.

1. An island in the busy Indian Ocean

25. The fact that Madagascar is an island has been and remains one of the principal sources of its profound unity, which goes beyond the diversity of the people, regions and topography. Despite the disputes, rivalries between monarchs and civil wars which have marked the history of Madagascar since the first populations were formed, its island nature has helped to bring the ethnic groups together and protect the people from the invasions and migrations to which countries with land frontiers are exposed. Moreover, the waters of the Indian Ocean have always been used for sea passages, while providing landing places for the early navigators and possibilities for seaborne migration.

26. Historical, archaeological and sociocultural research has reached a point at which the hypotheses concerning the origins of the Malagasy people have now been reduced to a few, although the actual facts are still uncertain: it is generally acknowledged that an indigenous population already existed during the periods of successive migration from Indonesia, East Africa, Arabia and, much later, Portugal. Moreover, these migrations succeeded each other over a long period about which little is known and were very probably localized, corresponding to natural migratory movements and points on the west coast at which vessels sailing through the Mozambique Channel went aground. The lesson to be learned from this period of prehistoric migration is that the various migrations often left a lasting mark on the social customs, legal traditions and structure of society.

2. Thirteenth and fourteenth centuries: appearance of kingdoms

27. In the thirteenth and fourteenth centuries, when the history of Madagascar begins to be better known, the geographical and human context accounts for the birth of kingdoms which, each in its turn, attempted to conquer its own living space, either by occupying virgin territory or by making war on the neighbouring kingdoms or large social groups. This period is also rich in sociological lessons in so far as it partially explains the extensive migrations of populations driven out of their lands or reduced to slavery. The probable result was a convergence of traditions and customs, and profound social changes within the groups that had been disrupted and persecuted and had suffered a serious breakdown of the social structure.

3. Predominance of certain kingdoms

28. The following periods were marked by the successive predominance of certain kingdoms, in particular the Sakalava Kingdom which, towards the end of the eighteenth century, imposed its authority, if not its influence, on at least half of Madagascar, as far as the gates of the capital of the Merina Kingdom, Ambohimanga. In the nineteenth century, weakened by internal conflict, the royal line of Sakalava was displaced by the expanding Merina Kingdom. But other kingdoms resisted penetration by the kingdoms which had successively exercised authority. At the time of the colonial conquest of 1895-1896, whole regions, especially in the south, had withstood the expansion of the Merina monarchy.

29. Though necessarily schematic, this survey of Malagasy history partly explains the island's subsequent and even current political development. However, it also confirms the movements of populations and the increasing complexity of a civilization of very diverse origin which internal wars, together with reconciliations, alliances and coexistence on the same territory, have helped to draw together and sometimes unify.

4. Foreign intervention

30. Foreign intervention and its influence, mainly that of England and France, became particularly important from the middle of the nineteenth century. Historically, England played a key role from the beginning of the nineteenth century (arrival of the first English missionaries in 1817) up to the partitioning of Africa by the colonial powers, following the Conference of

Berlin, and the Franco-British Convention of 5 August 1890, in which England recognized Madagascar as a French protectorate. In actual fact, this protectorate had been in effect since 1885. This period deserves to be studied in more detail, since it ended in the annexation of Madagascar and its transformation into a French colony, but this is not the place. Nevertheless, it is important to bear in mind the following facts about this troubled period: the opening up of Madagascar to the outside world, and the influence exerted successively by two European nations which introduced, in particular, new legal concepts, Christianity as inculcated by the missionaries and, with too little discernment, the French judicial system in force at the time of annexation. Admittedly, universal values were introduced and, in fact, are also to be found in the last Malagasy laws pre-dating 1896.

31. Following years of national resistance, independence was recovered progressively, first in the form of extensive autonomy within the so-called French "communauté", then by a negotiation procedure linking independence with Franco-Malagasy cooperation agreements.

B. Structure and nature of the State

32. In the history of the Malagasy State since 1960 it is possible to distinguish three periods during which the various constitutions or fundamental laws always referred to the Republican State.

(a) A neo-liberal period from 1960-1972, with a strong presidency, a liberal economic regime and a certain preponderance of French influence which, however, found expression in financial and material aid and technical assistance that made it possible to put in place the elements necessary to the life of a genuine State. This period ended in domestic troubles (insurrection due to famine and poverty in the south, serious trouble in the university and the schools, political crisis);

(b) A period of socialist leanings, preceded by the disturbances of 1972-1975, the logical but poorly controlled continuation of the change of regime which took place in 1972. The year 1975 saw the birth of a democratic republic intended to prepare the way for a socialist regime. The legal structures, in particular, were dominated by a constitution which gave a great deal of power to the president and was regarded as the enabling legislation for a fundamental text: the Charter of the Malagasy Socialist Revolution. From their analysis of this rather special situation the jurists concluded that this was a State subject to the rule of law, but limited by the existence of a legal structure, namely the Charter of the Socialist Revolution and the Constitution, the existence of a national front for the defence of the revolution consisting of an alliance of the parties forming the majority, and restrictions on various fundamental freedoms;

(c) A liberal and democratic period marked by the adoption of a new Constitution on 18 September 1992.

C. Present organization of the organs of power

33. The groundwork for the implementation of the new Constitution of the Republic of Madagascar has been laid during a transition period governed by a provisional Convention adopted on 31 October 1991 by all the parties concerned, in both the political and religious spheres. As the transition period has not yet ended, the present study of the organization of the organs of power will be mainly confined to a brief analysis of the constitutional provisions.

1. The general principles

34. The Constitution is preceded by a preamble whose contents are all the more important in that the preamble of any Constitution forms an integral part of Malagasy positive law (art. 13 of Ordinance No. 62041 of 19 September 1962). Leaving aside the classical provisions which figure in any preamble to a constitution with liberal tendencies, the following principles, in particular, are affirmed:

(a) Respect for international obligations, including previous treaties or conventions ratified by the Malagasy State or comprising important measures for the protection of children; this applies in particular to the international Covenant on Civil and Political Rights approved by Act No. 70001 of 23 June 1970;

(b) Respect for and protection of fundamental freedoms, those of the Universal Declaration of Human Rights but also of other international conventions (in particular, on the rights of women) and the liberties enshrined in the body of the Constitution itself (title II of the Constitution);

(c) The separation and balance of powers: the principle is ancient and well-established, but the notion of "balance" is expressly confirmed, together with the democratic procedures for implementing this balanced separation of powers;

(d) Transparency in the conduct of affairs and the participation of citizens in the exercise of power: the affirmations may be considered redundant, but they have a special resonance, since communication and the participation of the citizen in the management of public affairs have not always been among the foremost concerns of the State;

(e) The establishment of a State subject to the rule of law;

(f) The struggle against injustice, inequality and discrimination in all its forms.

2. Civil liberties

35. The first subtitle of title II of the Constitution is entirely devoted to the civil and political rights and duties of citizens, while the second subtitle is concerned with their economic, social and cultural rights and duties. It should also be noted that the drafters of the Malagasy

Constitution have incorporated in it civil rights and duties whose content is dispersed among various international treaties (civil and political rights, the economic and social rights and duties of the State).

3. The separation of powers and the State subject to the rule of law

36. The new Constitution is fundamentally different from the previous constitutions which gave priority to the executive branch and did not assign as much importance to the separation and balance of powers. The separation and balance of powers are ensured by a diminution, as compared with previous constitutions, in the prerogatives of the Head of State. The latter, however, is the guarantor of the Constitution, independence and territorial integrity. The President of the Republic appoints the Prime Minister, presides over the Council of Ministers and is the Commander-in-Chief of the Armed Forces. In legal terms, he represents a high authority directly elected by universal suffrage.

37. The prerogatives and organization of the legislative branch give it greater importance. These prerogatives are extensive: in particular the National Assembly designates the Prime Minister who must place before it a general political programme. The legislative function is broader in scope than under previous constitutions. There are, in fact, two chambers: the National Assembly and the Senate. The latter shares in the exercise of legislative power under a procedure that enables it to play a full part in the enactment of legislation.

38. The Prime Minister and the Government are responsible for the exercise of executive power. The Government has wide powers, but in exercising them it seeks to maintain a balanced relationship with the Parliament. The Government must submit an annual report on the implementation of its programme for debate in the National Assembly.

39. As compared with the previous systems, the judicial power has been radically reorganized. A constitutional, administrative and financial court has been established. This consists of three bodies: the Constitutional Court, guardian of the Constitution; the Council of State, which has jurisdiction over proceedings for the annulment of acts of the administrative authorities; and the Court of Audit, which audits the accounts of public accountants and has various watchdog functions. As a result, the Supreme Court, which already existed under the other constitutions, is now exclusively concerned with the proper functioning of the ordinary courts, through both its supervisory powers and its prerogative to judge applications for judicial review. However, the duties of the Supreme Court seem likely to increase because of the effective decentralization of the administration of justice resulting from the establishment of courts of appeal outside Antananarivo.

40. Thus there is a clear desire to achieve, by means of a system of procedures and provisions of some complexity, a real, balanced separation of powers, accompanied by a concern for balance in the exercise of those powers.

III. General legal framework within which human rights are protected

41. As described in the Constitution and the fundamental laws organizing each branch of justice, these institutions all contribute, within their competence, to the protection of human rights.

42. The judicial organization forms a hierarchy embracing:

(a) The courts of first instance and their sections. These are courts of primary jurisdiction and administrative measures are taken to ensure that they are accessible to the citizens, especially those furthest from the large urban centres. Thirty-one courts of first instance for such a widely scattered population of more than 10 million is clearly not enough to ensure genuine decentralization for the defence of human rights. However, efforts are being made to enlarge the number of courts and, through the "travelling hearing" system, to bring together justice and the citizen;

(b) The establishment and imminent inauguration of two courts of appeal (Majunga and Fianarantsoa) will help to give the citizen easier access to the channels of appeal and at the same time shorten proceedings;

(c) The Supreme Court has cassation functions over and above those already known. According to article 11 of the Act of 19 July 1961 establishing a Supreme Court, the interests of the law and violation of the general principles of justice are grounds for review. Thus, a judgement without right of appeal, even if it has already been the subject of a decision in cassation, can be questioned when it is manifestly contrary to the general principles of law and the principles of equity.

43. As the law now stands, the Constitutional Court has relaxed the procedure for bringing cases before it, which is normally limited to the plea of unconstitutionality, by implicitly examining the questions of substance whose elements form the grounds for the finding of unconstitutionality. A decision of the Constitutional Court of 19 February 1985 states that "the verification of constitutionality is not restricted to the examination of the plea ... the scrutiny of all other acts that might interfere with the exercise of the fundamental rights and freedoms guaranteed by the Constitution is also, implicitly but necessarily, within the jurisdiction of the Constitutional Court".

44. Article 40 of the Constitution of 18 September 1992 provides that "the State shall undertake to establish an independent body responsible for promoting and protecting human rights". It is no doubt in application of this new provision of Malagasy law that the Government has appointed an ombudsman and undertaken to provide him with the means of performing his duties.

45. There is no provision in Malagasy national law for a special system of compensation for the violation of human rights. Nevertheless, the application of the general principles of law and the opportunity for any victim of abuses or violations to bring an action before the courts provide a normal framework of recourse for infringement of human rights, with the possibility of damages being awarded. Article 13 of Ordinance No. 62041 of 19 September 1962 states

that the general principles are "incumbent upon the judge who must, in every case, ensure that they are respected and observed within the framework of the legislation in force".

46. The instruments relating to human rights are incorporated de jure in national law following accession and ratification in the form prescribed by international public law. It must be acknowledged that the incorporation of the provisions of international conventions in domestic law makes the application of the conventions and treaties more effective, focuses the mind of the authorities and helps to make the provisions of international law, which do not always attract attention, better known to the public.

IV. Information and publicity

47. Within the Malagasy Government, each of the ministries concerned monitors the application of the international conventions and prepares the reports requested by international committees. On various occasions intensive information campaigns aimed at special groups may be organized.

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